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February 4, 2005

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: *EX PARTE NOTICE* – CS Docket No 98-120; MM Docket No. 99-360; MM Docket No. 00-168; MB Docket No. 04-233

Dear Ms. Dortch:

On behalf of Capitol Broadcasting Company, Inc. (“CBC”) on February 3, 2005, I met with Catherine Bohigian of Commissioner Kevin Martin’s office. During our meeting our discussions focused on the wide-ranging, long-term impact of a Federal Communications Commission (“the Commission”) decision that does not require multichannel video providers to carry broadcasters’ digital multicast signals, as well as the interrelationships of all of the above dockets.

First, CBC stated its belief that the Commission should complete its inquiries on localism and the public interest obligations of digital broadcasters, as well as issue an order in the standardized reporting docket, before tackling the digital must carry issue. The localism inquiry is particularly important in determining how the Commission continues to ensure one of its most important core values. CBC believes multicasting represents an important opportunity to enhance localism.

Regarding the impact of a “no multicasting” must carry decision, CBC noted the following:

- 1) A vote against multicasting forever changes the face and future of terrestrial broadcasting.

At the beginning of the digital transition, like most broadcasters, CBC believed that broadcasters faced a choice between high-definition and multicasting based on digital bandwidth. CBC initially chose high definition, but thanks to advances in compression technology a broadcaster can now do both. For more than three years, WRAL-DT, our Raleigh-Durham CBS affiliate, has offered both CBS high-definition programming and a full-time local news channel, giving our local viewers excellent high-definition entertainment programming and more local information on their individual schedules. In effect, our over-the-viewers get double the choices, and we get tremendous flexibility that was impossible in the analog world. For example, last Sunday, WRAL-TV/DT carried the National Football League game that kicked off late afternoon, which would have



meant no local news in the old analog world, but with multicasting our non-football fans could tune in to our 6:00 pm newscast on the WRAL NewsChannel.

WRAL-DT is fortunate – our major local cable provider carries WRAL NewsChannel on its digital tier. The question is in a world where 85% of our viewers are multichannel subscribers, could we afford to program the WRAL NewsChannel without cable carriage? The answer is no.

Therefore, without multicasting must carry, broadcasters must seek cable and/or Direct Broadcast Satellite (“DBS”) carriage before developing new channels. In effect, multichannel providers may become roadblocks to the development of new local programming.

CBC completely understands cable’s argument that if broadcasters provide good local programming they will carry it, but there is no guarantee, so will broadcasters risk the investment, develop new local channels and then seek carriage? If they do, will cable companies follow-through? Does the government really want a local broadcaster having to ask permission of a monopoly cable company before deciding how to program its digital spectrum? The potential for missed opportunities and mischief seems enormous.

2) Multichannel carriage opportunities shift based on a broadcasters’ status.

The hard cold reality is that, as with all market-driven negotiations, leverage is important. Unfortunately, in a “no multicasting” must carry world, this creates three classes of broadcasters:

- a. Non-Big Four Affiliates, including many religious and minority broadcasters: Most of these broadcasters have no negotiating leverage, so multicasting carriage seems unlikely.
- b. Network Owned & Operated Stations (“O&Os”) : With the ability to negotiate multiple major market deals and the ability to negotiate using popular cable channels, it is likely that O&Os will get multicasting carriage.
- c. Non-O&O Big Four Affiliates: This one is a toss-up, but one thing all affiliates fear is ceding more power to the networks to control our programming. However, we may need to rely on the networks’ carriage leverage to create “joint venture” multicast channels that include both national and local content.

If carriage of all channels after the first channel is going to be market-driven, then perhaps there are other rules that the Commission should revise.

3) The vision of additional children’s programming created through multicasting may be a mirage.

Children’s groups, the Commission and viewers looked forward to additional children’s programming resulting from multicasting. If broadcasters are not multicasting, then there is no additional children’s programming.

4) The possibility of additional public affairs programming is also lost.

Multicasting presents tremendous opportunities for more local public affairs programming. Here we encourage the Commission to adopt digital public interest



obligations, but again, if broadcasters are not multicasting, then there will be no additional public affairs programming.

- 5) A “no multicasting” vote slows down the digital transition.

The Commission need only listen to Ken Ferree’s testimony on Capitol Hill last summer. When asked, he acknowledged that he believed multicasting carriage would speed the transition. It is likely that legislation will pass this year setting a hard transition date. With that shift, now is not the time for the Commission to adopt rules that will slow down the transition.

- 6) The impact of a “no multicasting” must carry decision is so great the battle doesn’t end – the battleground just changes to Capitol Hill.

As stated in number 1), this decision impacts the future of terrestrial broadcasting forever, so we have to fight another battle in what appears to be a very protracted war. Unfortunately, while two big industries battle, the real losers are consumers who are missing the tremendous opportunity presented by multicasting.

We also discussed another unfortunate impact for those of us against media consolidation in that it is likely that “the rich get richer and the big get bigger.” If there are questions relating to this filing, please contact the undersigned.

Best regards,

/s/ Dianne Smith

Dianne Smith
Special Projects Counsel

cc. Matt Brill (via e-mail)